

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

DARREN HARTNESS

PLAINTIFF

VS.

NO. 4:07-cv-00269 GTE

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

ORDER

Defendant Union Pacific Railroad Company ("Union Pacific") has filed a motion to exclude Plaintiff's recent medical and untimely medical records, or, in the alternative, for a continuance. Plaintiff Darren Hartness has filed a response in opposition. After considering the parties' submissions and the record in this case, the Court concludes that a fair compromise is to briefly continue this case from its currently scheduled trial date of Monday, August 25, 2008.

Union Pacific complains that Plaintiff has recently produced additional financial and medical records that were neither produced in discovery nor identified in Plaintiff's Pre-trial Information Sheet. Plaintiff responds that the recently produced medical records are consistent with previously produced medical records as they reflect the same treatment (medication and steroid injections) for Plaintiff's continuing back pain. With respect to the bank records, Plaintiff points out that such records are offered to rebut Defendant's contention that he was earning as much as \$1,500 a week driving a truck.

This case should be ready for trial. The discovery deadline and the motion deadline

(including the deadline for the filing of *Daubert* motions) have expired in this case. While the Court is willing to briefly continue the case, this does not mean that the case is being reopened for discovery. The Court is skeptical of Union Pacific's claim that the newly produced records merit further discovery. The parties are directed to confer immediately, and to the extent that any further limited discovery is to be conducted, the parties shall so notify the Court not later than **Friday, August 22, 2008**, identifying with specificity the proposed discovery and the date it is to be completed. **If permitted, all supplemental discovery shall be completed not later than September 5, 2008.**

The Court directs that the trial of this case shall begin on **Monday, September 22, 2008** at 9:00 a.m. Counsel are directed to appear by 8:30 a.m., with exhibit and witness lists prepared.¹ The Court will pre-admit all exhibits as to which there is no objection as to authenticity or admissibility.

The remaining deadlines contained in the Court's Amended Scheduled Order are hereby modified as follows:

JURY INSTRUCTIONS ²	Fri., Sept. 12, 2008
MOTIONS IN LIMINE/EVIDENTIARY	Fri., Sept. 12, 2008
STATEMENT OF THE CASE & PROPOSED VOIR DIRE	Fri., Sept. 12, 2008

¹ Counsel are directed to use the Exhibit and Witness List form available on the Court's website (www.are.uscourts.gov).

² Jury instructions may be faxed to Chambers at (501) 604-5167 or e-mailed to my law clerk (Edie_Ervin@ared.uscourts.gov). Please include, by e-mail or CD-rom, a copy of the proposed jury instructions.

IT IS HEREBY ORDERED THAT Defendant Union Pacific's Motion to Exclude Plaintiff's Medical and Financial Records, or alternatively, for a Continuance (Docket No. 36) be, and it is hereby, DENIED IN PART AND GRANTED IN PART. The case will be continued to the week of September 22, 2008, on the terms and conditions stated herein.

IT IS SO ORDERED this 18th day of August, 2008.

/s/Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE